

REMARKS

By the present amendment, claims 1, 2 and 5 have been amended to obviate the examiner's objections thereto and/or to further clarify the concepts of the present invention. More particularly, independent claims 1 and 2 have been amended to incorporate the subject matter from dependent claim 8, and claim 8 has been canceled. In addition, dependent claim 5 has been amended to delete "gluconates" from the recitation of chelating agents. The applicants respectfully submit that no new matter has been added. It is believed that this Amendment is fully responsive to the Office Action dated September 30, 2009. Entry of these amendments is respectfully requested.

In the Action, claim 5 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In making this rejection, it was asserted that since claim 5 recites certain chelating agents and is dependent upon claims 1 or 2 which do not recite at least some of the same chelating agents, the claims are inconsistent.

In response, "gluconates" have been deleted from claim 5. It is therefore submitted that the claim is in full conformity with the provisions of the cited statute. Therefore, withdrawal of the rejection of claim 5 under second paragraph of 35 U.S.C. § 112 is respectfully requested.

Claims 1-3 and 5-12 were rejected under 35 U.S.C. 103(a) as being unpatentable over the patent to Hojo et al (US 6,254,905 B1) in view of the combination of the patent to Koumarianos (US 6,488,957) and the publications to Grossman (About.com, "Facts About Iron" pages 1-5 <http://ibd.crohns.about.com/cs/nutrition/a/fdairon.html>) and Klahorst ("Calcium, An Important Nutrient" pages 1-5 http://www.ifan.ca/newsletter/2001_05.htm).

In making the subject rejection, somewhat the same reasons were relied upon as set forth in the prior Action. That is, it was acknowledged that the Hojo et al patent does not teach the amount of an additive composition as recited in claims 1 and 2 which includes a chelating agent and the calcium ion concentration as claimed. However, it was asserted that the inclusion in a food additive of ferrous gluconate, a suitable chelating agent as disclosed on page 11 of the subject specification, is taught by the Grossman and Koumarianos publications in terms of a suggested daily dosage of iron. The publication to Klahorst was cited for teaching a suitable amount of calcium to be included in a food additive. It was concluded that it would be obvious to one of ordinary skill in the art to include the amounts of the components as claimed. Reconsideration of this rejection in view of the above claim amendments and the following comments is respectfully requested.

As noted previously, independent claims 1 and 2 have been amended to further distinguish over the cited publications. In particular, these claims have been amended to distinguish over the cited publication by reciting a specific calcium ion concentration, i.e., a calcium ion concentration M (mg/l) being defined by $0 \leq M \leq 10$.

The now recited calcium ion concentration M (mg/l) in claims 1 and 2 is disclosed on page 19, and specifically at lines 5-8, where it is stated:

“If the calcium ion concentration (mg/l) is not less than 10, when the food composition is added to potions and the like, the stability of vegetable or animal proteins are liable to be damaged to thereby lead to thickening and, in a worse case, gellation.”

For example, in a food additive composition of Example 3, the calcium ion concentration 4.0 mg/l which is controlled within the range of $0 \leq M \leq 10$. In contrast, in a food additive composition of Comparative Example 3 the calcium ion concentration is 22 mg/l outside the above range as is set forth in Tables 1 and 2.

Further in support thereof, in a magnesium-enriched whitener of Example 33 containing the food additive composition of Example 3, even after 3 months, an amount of precipitate is evaluated as “3” where a precipitate is slightly observed. In contrast, in a magnesium-enriched whitener of Comparative Example 23 containing the food additive composition of Comparative Example 3, after only 7 days, the calcium-enriched whitener gelled as is set forth in Tables 6 and 7.

In this manner, by controlling the calcium ion concentration to the specific range, it is possible to provide a food additive composition suitable for foods like a whitener and a potion which

require a long relishing period. In particular, the cited publications fail to teach the relationship between such calcium ion concentration and the long-term stability of foods. Therefore, it is not foreseeable whatsoever to be able to provide a food additive composition suitable for food requiring a long relishing period by having a calcium ion concentration to the specific range as presently claimed. Consequently, it is submitted that such a food additive composition is not taught or suggested by the patent to Hojo et al or the publications to Grossman and Klahorst, whether taken singly or in combination.

Further, one of ordinary skill in the art would not be led to combine the teachings of the three publications in the manner in which were done in the rejection. It is well established principle of U.S. patent practice that the prior art must contain some suggestion for combination since, without such, any combination is pure speculation on the part of the examiner and is based on a prohibited hindsight reconstruction from applicants' own disclosure. Therefore, it is submitted that the subject claims are not obvious over the Hojo et al patent alone or in combination with the Grossman and Klahorst publications.

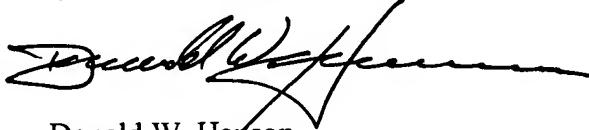
For the reasons stated above, withdrawal of the rejections and allowance of claims 1-3 and 5-7 and 9-12 as amended over the cited patent publications are respectfully requested.

In view of the foregoing, it is submitted that the subject application is now in condition for allowance and early notice to that effect is earnestly solicited.

In the event that this paper is not timely filed, the applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,

KRATZ, QUINTOS & HANSON, LLP



Donald W. Hanson
Attorney for Applicants
Reg. No. 27,133

DWH/evb

Atty. Docket No. **050412**
Suite 400
1420 K Street, N.W.
Washington, D.C. 20005
(202) 659-2930



23850

PATENT & TRADEMARK OFFICE

Enclosure: Petition for Extension of Time

I:\DONALD\TRANSFER\05 cases\050412.AM5